

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
AUG 25 2000  
DAVID J. MALAND, CLERK  
DEPUTY

[illegible]

CIVIL ACTION NO. ~~6:00~~-CV442-WMS

3

I.

**RESPONSE TO THIRD PARTY DEFENDANT "HEALTH CARRIERS"**

New Era admits that it is an insurance company doing business in the State of Texas, and that it has been served with process and the third party petition in this action. New Era is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in paragraph I, and therefore denies the same.

II.

**Response to Plaintiffs' Allegations**

Without admitting the substance of any such allegations, New Era admits the allegations in paragraph II that Plaintiffs' Original Petition filed herein against Defendants/Third-Party Plaintiffs make many vague, broad and wide ranging allegations and that Plaintiff alleges that Defendants/Third-Party Plaintiffs mishandled his patient account and the accounts of other persons similarly situated in the respects listed in subparagraphs A, B, C, and D of paragraph II of the Original Third Party Petition, and that Plaintiff seeks to sue not only for himself but also for a class of persons and that Defendants/Third-Party Plaintiffs have denied all allegations of Plaintiffs.

III.

**Response to Role of "Health Carriers"**

Upon information and belief, and insofar as they pertain to New Era, New Era admits the allegations in the first, second, and last sentences of paragraph III. However, New Era is without knowledge or information sufficient to form a belief as to the truth of the remaining averments

about New Era or any of the averments about the other Health Carriers in paragraph III and therefore denies the same.

IV.

**Response to Contributions/Indemnity Claim**

New Era is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph IV, and therefore denies the same.

V.

**Response to Request for Declaratory Relief**

New Era is without knowledge or information sufficient to form a belief as to the truth of the averments in paragraph V, and therefore denies the same.

VI.

**Response to Prayer**

New Era denies that Defendants/Third-Party Plaintiffs are entitled to the relief requested in paragraph VI.

VII.

**Affirmative Defenses**

1. One or more of Defendants/Third-Party Plaintiffs' claims are pre-empted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et. seq.*. Further, on information and belief, some or all of the claims of the Plaintiff's putative class members are pre-empted by ERISA because they relate to benefitss allegedly due under one or more employee

welfare benefit plans governed by ERISA, for which Defendants/Third-Party Plaintiffs are seeking contribution and indemnity.

2. Plaintiffs' action for which Defendants/Third-Party Plaintiffs are seeking contribution and indemnity, is not properly maintainable as a class action as the requirements for a class action are not met.

3. To the extent that one or more of the Plaintiff's putative class members have failed to exhaust their administrative remedies in connection with their claims for benefits allegedly due under an employee welfare benefit plan governed by ERISA, for which Defendants/Third-Party Plaintiffs are seeking contribution and indemnity, Plaintiffs' and Defendants/Third-Party Plaintiffs' claims herein must be dismissed.

4. Upon information and belief, one or more of the Plaintiff's putative class members have assigned their rights to benefits under their employee welfare benefit plan, governed by ERISA, to one or more of the Defendants/Third-Party Plaintiffs, and therefore such Plaintiff's putative class members lack standing to seek recovery of the same from Defendants/Third-Party Plaintiffs and Defendants/Third-Party Plaintiffs are precluded from seeking contribution or indemnity for the same from Third-Party Defendants.

5. Plaintiffs' and Defendants/Third-Party Plaintiffs' claims herein fail to state a claim- upon which relief can be granted and therefore should be dismissed.

6. To the extent that any agreements between Defendants/Third-Party Plaintiffs and New Era contains an arbitration clause, Defendants/Third-Party Plaintiffs' claims herein are premature and fail to state a claim.

7. Plaintiffs' and Defendants/Third-Party Plaintiffs' claims herein are barred by the applicable statutes of limitations and should be dismissed.

8. Plaintiffs' and Defendants/Third-Party Plaintiffs' claims herein are barred by the doctrines of waiver, laches, and estoppel and should be dismissed.

9. New Era pleads such other affirmative defenses which cannot be anticipated at this time, but which may become apparent and applicable during the pendency of this lawsuit, by reason of future discovery and by reason of allegations and answers of other parties. New Era specifically reserves its right to amend its answer in order to respond accordingly and to respond to any amended third-party petitions which may be filed.

### **COUNTERCLAIM**

1. This counterclaim is asserted against Defendants/Third-Party Plaintiffs, who have already appeared herein.

2. New Era seeks herein to recover from Defendants/Third-Party Plaintiffs its reasonable and necessary attorneys' fees and costs of court expended in the defense of this action, pursuant to 29 U.S.C. § 1132(g).

### **PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendants New Era Life Insurance Company and New Era Life Insurance Company of the Midwest respectfully pray that (1) this Court deny all relief requested by Third-Party Plaintiff; (2) Third-Party Plaintiffs and Plaintiffs take nothing herein; and (3) New Era Life Insurance Company and New Era Life Insurance Company of the Midwest have and recover its reasonable and necessary attorneys' fees and costs

of court expended in the defense of this action. 29 U.S.C. § 1132(g). New Era Life Insurance Company and New Era Life Insurance Company of the Midwest also seek such other and further relief, both general and special, at law or in equity, to which it may be justly entitled.

Respectfully submitted,

The Law Offices of Robert L. Harris, Esq.  
First State Bank of Texas  
1919 S. Shiloh, Suite 200  
Lock Box 25  
Garland, Texas 75040  
Telephone: (972) 278-5600  
Facsimile: (972) 278-5660

By: 

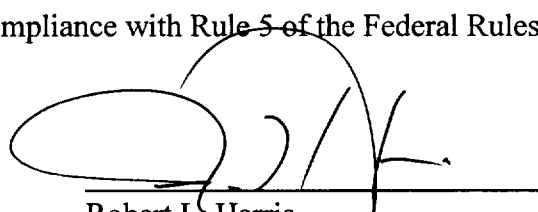
Robert L. Harris

State Bar No. 09090430

ATTORNEY FOR NEW ERA LIFE INSURANCE  
COMPANY AND NEW ERA LIFE INSURANCE  
COMPANY OF THE MIDWEST

**CERTIFICATE OF SERVICE**

This pleading was served in compliance with Rule 5 of the Federal Rules of Civil Procedure.

  
Robert L. Harris